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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,503	03/26/2004	William B. Rademaker	RADW122601	8914

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EXAMINER	
MOHANDESI, JILA M	

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/811,503	RADEMAKER, WILLIAM B.	
	Examiner	Art Unit	
	Jila M. Mohandesi	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *08-10-04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means", **"comprising"** and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims1-7 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Grosskopf et al. (5,568,866). Grosskopf '866 discloses a dental cleaning device (floss) disposed in a packet (100) with advertising text positioned thereon attached to a product packaging or cards. See Figure 1 embodiment and column 1, lines 44-49 and lines 60-62 and column 3, lines 49-58.

All the functional claim language and statements of intended use (food product container) do not make an otherwise unpatentable claim patentable. It is believed to be

well settled that "recitation with respect to manner in which claimed apparatus is intended to be employed does not differentiate claimed apparatus from prior art apparatus satisfying structural limitations of that claimed, "*Ex parte Masham* 2 USPQ2nd 1674. Also *Ex parte Casey* 152 USPQ 235. The law of anticipation does not require that an anticipatory reference teach what the applicant is claiming or has disclosed, but only that the claims "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760, 218 USPQ 871 (Fed Cir. 1983). Furthermore, it is only necessary that the reference include structure capable of performing the recited function in order to meet the functional limitations of a claim. See *In re Mott*, 557 F.2d 266, 194 USPQ 305 (CCPA 1977). Since the reference device has all of the same structural elements, as noted above, it would clearly seem to be inherently capable of performing the functions as claimed. Furthermore, the product packaging of Grosskopf '866 can inherently be used as a food product package.

4. Claims 1, 7-8, 10-11 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Heath (4,804,101). Heath '101 discloses a dental cleaning device (floss and toothpicks) disposed in a food (smokeless tobacco) product container (10). See Figures 1-4 embodiments and column 2, lines 8-13.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grosskopf '866. With respect to claims 10 and 11, the product packaging of Grosskopf '866 can be used as a food or fast food container.

8. Claims 9 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grosskopf '866 in view of Kaufman et al. (5,524,764). Grosskopf '866 as described above discloses all the limitations of the claims except for the dental device package to include consumable breath freshening liquid and strip. Kaufman '764 discloses that it is desirable to package several different dental hygiene devices (dental floss 46, toothpaste or medicated gel 52, abrasive absorbent material pad and wipe) together in a package. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide different dental hygiene devices in the package of Grosskopf '866 as taught by Kaufman '764 for better cleaning and treatment of teeth.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are food product containers analogous to applicant's instant invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jila M Mohandesi
Primary Examiner
Art Unit 3728

JMM
March 25, 2006